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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

BRODEUR et al

Atty. Ref.: 11-843

Serial No. 09/063,377

Group: 1733

Filed: April 21, 1998

Examiner: Yao

For: **REINFORCED FOAM BACKED CARPET**

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Assistant Commissioner for Patents
Washington, DC 20231

Sir:

EVIDENTIARY DECLARATION OF J. WAYNE WILSON

I, J. Wayne Wilson, hereby say and declare:

1. I am the Modular Manager for Lees Carpets, a division of Burlington Industries, Inc. ("Burlington"), the assignee of the subject application. My educational background is: B.A. degree from Georgia Southwestern College. My work experience has been: 26 years in textiles; 23 of those years in carpet tile with Interface Flooring in the U.S.A. and in Shelf, England, and the last 6 of those years with Burlington. My expertise is in manufacturing so-called "modular carpet". I have been Modular Manager for Burlington since April '94, and am familiar with the commercial carpeting marketed by Lees Carpets, and the commercial carpeting marketed by Lees' competition.

2. In 1999, Lees started marketing carpeting made according to the method set forth in claims 1 through 4 of the above identified application, and illustrated in Figures 1 through 3 of the drawings. Lees has produced a commercial carpet in tile or roll form

using an open mesh fiber reinforced foam layer with foam nodules by first producing a carpet in tile or roll form having a primary backing through which carpet fiber bundles are tufted, and a precoat locking the tufts in place; bringing an open mesh fiber reinforced foam layer with foam nodules into intimate contact with the relatively smooth back face of the initial carpet; and adhering the open fiber reinforced foam layer to the relatively smooth back face so that a carpet tile or roll is produced that has little or no curling or doming.

3. The carpet produced according to the method of claims 1 through 4 of this application is sold by Lees under the trademark "ERGOAIRE". Despite the fact that it has been sold only since 1999, Lees has already had orders for more than 100,000 square yards of the carpeting, and the carpeting produced according to this application is in service in airports, banks, and municipalities.

4. One of the advantages of the product produced according to this application is that it has a closed cell open mesh fiber reinforced foam layer with foam nodules. This construction provides durability and moisture resistance, and it is provided in an integrated system so that it will not separate from the face of the carpet. Lees markets this carpeting – and has demonstrated that its marketing representations are correct – as the ultimate in providing comfort and reducing fatigue for people who must be on their feet for most of the day. It has ergonomic advantages that are superior to other products marketed by Lees, such as the Lees Integrated Cushion Thermobond ("ICT")

which uses fiberglass reinforced PVC backing, but that does not have a foam construction with nodules.

5. Although the "ERGOAIRE" product is more expensive than the ICT product, it has been accepted by many customers because of the advantages associated with it. Because of the method of manufacture, to produce a product, pursuant to the above identified application, Lees is able to guarantee the "ERGOAIRE" carpet for life against doming, curling, and dishing, and to be dimensionally stable. As far as I am aware, "ERGOAIRE" is the only tile backing system that utilizes reinforced close cell foam.

6. The more than 100,000 square yards of "ERGOAIRE" that have been sold by Lees has not been sold by offering any special discounts or tie-ins to purchasers, or by any advertising or marketing campaign that is any more significant than other commercial carpet products sold by Lees. Rather, the "ERGOAIRE" product has been promoted and sold (at a price premium compared to prior Lees products which it replaces or supplements) because of the advantages provided by the product, including the reduced fatigue and other enhanced ergonomic advantages associated therewith, and because of the method of production thereof Lees can guarantee the carpeting for life against doming, curling, and dishing, and to be dimensionally stable.

7. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under

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Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date 3-27-00

J. Wayne Wilson
Wayne Wilson